

SUBCHAPTER A—HAZARDOUS MATERIALS AND OIL TRANSPORTATION

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

Subpart A—Definitions

Sec.

105.5 Definitions.

Subpart B—General Procedures

105.15 Defined terms used in this subpart.

OBTAINING GUIDANCE AND PUBLIC INFORMATION

105.20 Guidance and interpretations.

105.25 Reviewing public documents.

105.26 Obtaining records on file with RSPA.

105.30 Information made available to the public and request for confidential treatment.

SERVING DOCUMENTS

105.35 Serving documents in RSPA proceedings.

105.40 Designated agents for non-residents.

SUBPOENAS

105.45 Issuing a subpoena.

105.50 Serving a subpoena.

105.55 Refusal to obey a subpoena.

AUTHORITY: 49 U.S.C. 5101–5127; 49 CFR 1.53.

SOURCE: 67 FR 42951, June 25, 2002, unless otherwise noted.

Subpart A—Definitions

§ 105.5 Definitions

(a) This part contains the definitions for certain words and phrases used throughout this subchapter (49 CFR parts 105 through 110). At the beginning of each subpart, the Research and Special Programs Administration (“RSPA” or “we”) will identify the defined terms that are used within the subpart—by listing them—and refer the reader to the definitions in this part. This way, readers will know that RSPA has given a term a precise meaning and will know where to look for it.

(b) Terms used in this part are defined as follows:

Associate Administrator means Associate Administrator for Hazardous Ma-

terials Safety, Research and Special Programs Administration.

Approval means written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of this chapter (49 CFR parts 171 through 180).

Competent Authority means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for Competent Authority is “Appropriate authority” which is used in the International Civil Aviation Organization’s (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator is the United States Competent Authority for purposes of 49 CFR part 107.

Competent Authority Approval means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

(1) A specific regulation in subchapter A or C of this chapter.

(2) An exemption or approval issued under subchapter A or C of this chapter.

(3) A separate document issued to one or more persons by the Associate Administrator.

Exemption means a document issued by the Associate Administrator under the authority of 49 U.S.C. 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements.)

Federal hazardous material transportation law means 49 U.S.C. 5101 *et seq.*

File or *Filed* means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document.

Hazardous material means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazardous Materials Regulations or *HMR* means the regulations at 49 CFR parts 171 through 180.

Indian tribe has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Person means an individual, firm, co-partnership, corporation, company, association, or joint-stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

- (1) The United States Postal Service.
- (2) Any agency or instrumentality of the Federal government, for the purposes of 49 U.S.C. 5123 (civil penalties) and 5124 (criminal penalties).
- (3) Any government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose.

Political subdivision means a municipality; a public agency or other instrumentality of one or more States, municipalities, or other political body of a

State; or a public corporation, board, or commission established under the laws of one or more States.

Preemption determination means an administrative decision by the Associate Administrator that Federal hazardous materials law does or does not void a specific State, political subdivision, or Indian tribe requirement.

Regulations issued under Federal hazardous materials transportation law means regulations contained in subchapter A of this chapter (49 CFR parts 105 through 110) and in subchapter C of this chapter (49 CFR parts 171 through 180).

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary.

Transports or *Transportation* means the movement of property and loading, unloading, or storage incidental to the movement.

Waiver of Preemption means a decision by the Associate Administrator to forego preemption of a non-Federal requirement—that is, to allow a State, political subdivision or Indian tribe requirement to remain in effect. The non-Federal requirement must provide at least as much public protection as the Federal hazardous materials transportation law and the regulations issued under Federal hazardous materials transportation law, and may not unreasonably burden commerce.

Subpart B—General Procedures

§ 105.15 Defined terms used in this subpart.

The following defined terms (see subpart A of this part) appear in this subpart: Approval; Exemption; Federal hazardous material transportation law; Hazardous material; Hazardous materials regulations; Indian tribe; Preemption determination; State; Transportation; Waiver of preemption